

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 04060**, from AG Agricultural District to H-3 Highway Commercial District, requested by Mark Hunzeker on behalf of Larry Coffey, on property generally located at the northwest corner of N.W. 48th Street and Highway 34.
STAFF RECOMMENDATION: Conditional Approval.

ASSOCIATED REQUEST: Development and Conditional Zoning Agreement (05R-201).

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 10/13/04
Administrative Action: 10/13/04

RECOMMENDATION: Conditional Approval, as set forth in the staff report dated October 1, 2004 (6-0: Carlson, Larson, Marvin, Bills-Strand, Sunderman and Taylor voting 'yes'; Carroll, Krieser and Pearson absent).

FINDINGS OF FACT:

1. This is a proposal to change the zoning on a 10.09 acre parcel to relocate and expand the existing convenience shop now located on 2.98 acres, currently zoned B-1. The land and building will be impacted by the Department of Roads right-of-way acquisition for the realignment of N.W. 48th and N.W. 40th Streets at this location. The applicant wishes to relocate the operation to a more suitable location due to the road project.
2. The staff recommendation of conditional approval is based upon the "Analysis" as set forth on p.4-5, concluding that this change of zone will permit the relocation of a viable existing commercial operation. This request is in conformance with some policies of the Comprehensive Plan, but not others. The approval is conditioned on a) a development agreement/contract whereby the applicant applies for a subdivision and completes the requirements of the final plat, and b) the elimination of the "panhandle" area along Highway 34. The subdivision will assure proper access, easements and the paving of N.W. 40th Street.
3. The applicant's testimony is found on p.6-7. The applicant agreed with the staff recommendation, although indicating that he will continue to seek access to Highway 34 when the plat is submitted, despite staff's current objections to this access.
4. There was no testimony in opposition.
5. On October 13, 2004, the Planning Commission agreed with the staff recommendation and voted 6-0 to recommend conditional approval, as set forth in the staff report dated October 1, 2004. The staff recommendation requires a development agreement (which has been completed and is being introduced as Bill No. 05R-201), and a revised legal description excluding the 50' wide "panhandle" along Highway 34 (the revised legal description and map are on p.9-10).

FACTSHEET PREPARED BY: Jean L. Walker

DATE: August 8, 2005

REVIEWED BY: _____

DATE: August 8, 2005

REFERENCE NUMBER: FS\CC\2005\CZ.04060

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for Oct. 13, 2004 PLANNING COMMISSION MEETING

P.A.S.: Change of Zone #04060

PROPOSAL: A change of zone from AG Agriculture to H-3 Highway Commercial

LAND AREA: 10.09 Acres, more or less

CONCLUSION: This zoning will permit the relocation of a viable existing commercial operation. This request is in conformance with some policies in the Comprehensive Plan but not others. The approval is conditioned on a development agreement/contract whereby the applicant applies for a subdivision and completes the requirements of the final plat and the elimination of the "panhandle" area along Highway 34.

RECOMMENDATION:

Conditional Approval

GENERAL INFORMATION:

LEGAL DESCRIPTION: A 10.09 acre parcel located in the NE 1/4 of Section 31, T 11 N, R 6 E of the 6th P.M., Lancaster County NE. Metes and Bounds description attached.

LOCATION: Generally located at the northwest corner of N. W. 48th Street and Highway 34.

EXISTING ZONING: AG Agriculture

EXISTING LAND USE: pasture/farming

SURROUNDING LAND USE AND ZONING:

North: Ag land, zoned AG Agriculture

South: Ag land and Commercial land, zoned AG Agriculture and H-3 Highway Commercial

East: Ag land, zoned AG Agriculture

West: Ag land, zoned AG Agriculture

ASSOCIATED APPLICATIONS: None

HISTORY: Changed from County AA Rural and Public Use to AG Agriculture in the 1979 Zoning Update. The land to the south was changed from AG to H-3 in April 1995 (cz 2892).

Along the south side of Highway 34 Change of Zone #04022 from AG to H-3 received an approval recommendation from the Planning Commission. This change of zone has not been presented to the City Council at this time.

COMPREHENSIVE PLAN SPECIFICATIONS: This area is shown as Agriculture adjacent to Commercial on the Land Use Plan (pg F 23). This is in the Lincoln growth Tier III. A Comprehensive Plan Amendment was approved earlier this year that reflects this area and suggests it be studied for suitability for Tier I or II (CPA #04016). The 2025 Comprehensive Plan states:

Commercial and industrial districts in Lancaster County shall be located:

- within the City of Lincoln or incorporated villages
- outside of saline wetlands, signature habitat areas, native prairie and floodplain areas (except for areas of existing commercial and industrial zoning)
- where urban services and infrastructure are available or planned for in the near term
- in sites supported by adequate road capacity – commercial development should be linked to the implementation of the transportation plan
- in areas compatible with existing or planned residential uses
- in areas accessible by various modes of transportation (i.e. automobile, transit and pedestrian)
- so that they enhance entryways or public way corridors, when developing adjacent to these corridors
- in a manner that supports the creation and maintenance of green space as indicated in the environmental resources section of this Plan. Pg F 38

Existing businesses flourish and there are opportunities for new businesses within Lincoln and the incorporated communities. The Plan provides new employment locations and supports retention of existing businesses. Pg F 16

Encourage renovation and reuse of existing commercial centers. Infill commercial development should be compatible with the character of the area and pedestrian oriented.

Maintain and encourage retail establishments and businesses that are convenient to, and serve, neighborhood residents, yet are compatible with, but not intrusive upon residential neighborhoods.

Expansion of existing commercial and industrial uses should not encroach on existing neighborhoods and must be screened from residential areas. Pg F 49

During the planning period, improvements are planned for Interstate 80 and many of the existing Nebraska State Highways in Lincoln and Lancaster County. These improvements can generally be categorized as the widening of roadways or construction of interchanges. All of the projects listed below are considered to have funds committed to their construction during the planning period:

US-34, West, city limits west to county line 4 lanes + turn lanes Pg F 106

UTILITIES: No utilities are available

TOPOGRAPHY: Flat

TRAFFIC ANALYSIS: Highway 34/ Purple Heart Highway is a Federal highway with limited access and a 50' from centerline building line district. Northwest 48th/Woodlawn is a city major street with a 50' from centerline building line district. The State of Nebraska is in the process of a project to realign N.W. 48th and N.W. 40th Streets to a common intersection on Highway 34. Highway 34 will be a four lane facility with medians and turn lanes at this location.

NW 40th St. is not classified on the “Future Functional Classification” map nor included on the “Future Road Improvements in the County” map in the comprehensive plan.

The State's Transportation Improvement Plan indicates construction of Highway 34 in 2005-2006.

PUBLIC SERVICE: This is served by the Malcolm Rural Fire District, County Sheriff, and Malcolm School District #148.

REGIONAL ISSUES: NA

ENVIRONMENTAL CONCERNS: No historic or environmental resources are noted on this parcel.

This is within the Airport Noise zone 60DNL contour and is under the approach to runway 14.

The soil types at this site are classified as "Prime".

Since there are not City utilities available private water wells and private wastewater facilities will be required to serve the uses.

AESTHETIC CONSIDERATIONS: Entrance to the city. This is not in an identified Capital View Corridor.

ALTERNATIVE USES: Agriculture

ANALYSIS:

1. This proposal is for a change of zone on a 10.09 acre parcel to relocate and expand the existing convenience shop now located on 2.98 acres currently zoned B -1. The land and buildings will be impacted by the Department of Roads Right-of-Way for the realignment of NW 48th and NW 40th Streets at this location. The existing convenience store building will remain but will have indirect and circuitous access to the re-aligned NW 48th/NW 40th Street intersection.
2. The applicant wishes to relocate his operation to a more suitable location due to the road project.
3. This zoning is an expansion across the highway of existing H-3 zoning.
4. The potential timing for this area to be served by city services is proposed to be studied.
5. This applicant is requesting 10.09 acres to relocate the operation from the existing 2.98 acres. The applicant's attorney indicates the increase in size is needed for adequate parking and maneuvering area for trucks, and to accommodate a well and on - site waste treatment.
6. Access to the proposed parcel should be restricted to realigned NW 40th Street and not Highway 34. The access to NW 40th Street should be located 600 feet or more north of Highway 34. The construction plans show the realignment of NW 40th surfaced with gravel immediately north of the Highway 34 intersection. The portion of NW 40th St north from Highway 34 to the driveway access to this property must be paved with a protected left turn lane at the access point. The applicant will be expected to pay for the paving.

7. As a parcel over 10 acres, no plat is required. The applicant's attorney has promised that a final plat for this tract will be submitted in order to assure proper access, easements, paving of NW40th Street, and other review as required by the subdivision regulations. However, staff also would like to see a formal agreement submitted by the applicant to assure that the plat is completed and filed to govern the development of this tract. The plat should not be completed until the new right of way for NW 40th Street is acquired.
8. The change of zone "Lot" does not exist yet but will have to be split off at a later date.
9. As an entryway to the city, the new zoning district should provide a setback of clear space to the Highway. A 50' area along Highway 34 has been shown to remain AG for this purpose from the area of the proposed H -3 district. The 50' area also will acknowledge the entryway to the city, improve visual impact and allow for possible future needs for intersection improvement. A similar provision was made part of a similar "replacement" rezoning (CZ04022) on the south side of the highway, earlier this year.
10. Staff recommends approval of the request, excluding the 50 foot wide "panhandle" along Highway 34. The only purpose for this would be to facilitate future access to Highway 34, which the staff opposes.

Prepared by:

Marvin S. Krout
441-7491, mkrout@ci.lincoln.ne.gov
Planning Director

October 1, 2004

APPLICANT: Shanna L. Cole or Mark Hunzeker
1045 Lincoln Mall, Suite 200
Lincoln, NE 68509
(402) 476-7621

OWNER: Larry Coffey
P.O. Box 81463
Lincoln, NE 68501
(402) 475-1101

CONTACT: Shanna L. Cole or Mark Hunzeker
1045 Lincoln Mall, Suite 200
Lincoln, NE 68509
(402) 476-7621

CHANGE OF ZONE NO. 04060

PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 13, 2004

Members present: Carlson, Marvin, Larson, Taylor, Sunderman and Bills-Strand; Carroll, Krieser and Pearson absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Proponents

1. **Mark Hunzeker** appeared on behalf of **Larry Coffey**, the owner of the subject property as well as several hundred acres in this vicinity. The study for moving this entire area up in the phasing of the Comprehensive Plan for getting city services sooner is just beginning, if it is making any progress yet at all. The driving force behind this application is the fact that Hwy 34 is about to be widened and the Department of Roads is in the process of negotiating and acquiring that right-of-way. The convenience store near this location has suffered right-of-way takings, driveway closures and relocation of access more than once in the past several years, and the current plan is to reroute the access to this site, making it impossible for Mr. Coffey to continue the business as he does today. The purpose of this application is to rezone a parcel to enable Mr. Coffey to continue business in that vicinity and continue to serve the clientele that he is serving. That store represents Mr. Coffey's highest volume store. It is very desirable to have this service available in the area.

Hunzeker explained that the area of the change of zone is larger than the existing site. This area has had issues with respect to the sewer system and this change of zone area is of a size which is both convenient and large enough to assure safe, convenient access off of N.W. 40th and to have enough land to make sure the septic fields will be able to operate and to circulate traffic on the site in a much more efficient manner.

Hunzeker noted that the Director of Planning is interested in there being an administrative plat which would separate this parcel from the balance of Mr. Coffey's land, and the applicant has agreed. Hunzeker indicated that the final plat application would be submitted before this change of zone is on the Council agenda. Hunzeker also understands that the staff report indicates a desire to get a formal agreement with the plat that would be done in conjunction with the acquisition of the highway and N.W. 40th right-of-way. Hunzeker believes it is inevitable that the access points need to be defined.

Hunzeker believes this to be a very appropriate location for this use. In fact, when the study is completed and the ability to get sewer to this site is determined, he believes that there will be additional development to the north and west of this site, both residential and commercial. This is certainly an area where relative efficient expenditures of infrastructure dollars can result in some good usable residential as well as commercial sites.

Hunzeker stated that the existing building will not be moved. There will be a new building, likely a larger facility. The existing facility is out-moded compared to the more modern facilities that the applicant is building. That is one of the reasons they decided to increase the size of the parcel. There is real concern about how much land it will take for the sewer system.

Hunzeker confirmed that they will make application for the administrative plat prior to City Council action on this change of zone. He does not know whether the agreement will be worked out prior to getting this change of zone to the Council. It needs to be effective after the acquisition of the right-of-way. The parcel is located adjacent to the alignment of N.W. 40th Street that the Department of Roads has provided. The alignment along Hwy 34 sets back 50' off of the future right-of-way in order to assure that there will be a 50' buffer between the right-of-way and the zoning district line so that there will be a minimum of 50' there as a landscaped area that would not be occupied by parking. H-3 permits parking in the front yard.

Hunzeker explained that the purpose of extending the "leg" was to have a parcel that was zoned out that direction far enough to provide for a possible access to Hwy 34. The applicant is in discussions with the Department of Roads about the acquisition of right-of-way. The applicant's first choice would be for this property to have a right-in right-out access. Carlson believes that to be the issue at this point that this hinges on because everything else will be discussed through the platting process. Hunzeker agreed. When the plat is submitted, there will be discussion about access on both streets.

There was no testimony in opposition

Staff questions

Marvin inquired about the Director of Planning's comments attached to the staff report. Marvin Krout, the Director of Planning, explained that he was communicating with the Law Department to assure that a plat was in some way going to accompany the rezoning because the issues of access and improvements were going to be important in granting this change of zone. This property could be exempt from platting and those issues would not have been discussed without this condition as a part of the change of zone. This is basically conditional or contract zoning because we feel there needs to be some mechanism to insure that a plat is processed so that we can go through the discussion about access and improvements. When we talked about having a setback from Hwy 34, the applicant revised the legal showing the 50' area that is now not to be zoned commercial. He is not sure how that will affect the access questions because there won't be commercial zoning extended to Hwy 34. Krout believes that without the commercial zoning extending to Hwy 34, there would be opportunity for access to Hwy 34. A plat has to touch a public or private roadway. Right now there is no roadway out there. We want some kind of simple agreement to accompany the change of zone application as it goes to the City Council which basically states that the applicant agrees to submit a plat to allow the use of the property as desired.

Carlson inquired as to what makes the plat an issue. Is it the road access? Krout explained that there would be no control of access without the plat, except what the applicant might negotiate with the state and some minimal driveway requirements that might be 100' from Hwy 34 or N.W. 40th that the County Engineer would approve. There would be no restrictions. We are setting the tone

for this area, which may be developed in a sooner time and we want to set the right tone for an area along Hwy 34. There was some internal discussion about whether it is appropriate to rezone this area now because it does not have water or sewer and it is a larger area. Krout indicated that he has some empathy for property owners that are trying to maintain or expand a business, and we do expect this area to get water and sewer at some point in the future.

Marvin wanted to know who determines whether there is access on Hwy 34. Krout indicated that both the state and the city would have something to say about that access. There is a separate state permit process, but the city also controls access through the platting process. The city could be more strict, but not less strict, than the state.

Carlson inquired whether it is the Planning staff opinion that the issue of access is sufficiently dealt with here. Krout stated that he is prepared to see if the plat is submitted, and if the city and county staff review the plat and it does not meet our requirements, then there will probably be some appeal process. But, you can separate that issue from the appropriateness of a land use at this location.

Response

Hunzeker agreed with Mr. Krout's testimony. The subdivision will address the access issue. They cannot get the access if the state says no, nor if the city says no. The applicant is willing to go through the platting process and the 10.09 acres is just the number that came out.

Marvin inquired whether the applicant can live without the access on Hwy 34. Hunzeker stated that it is ultimately something the applicant really wants. They wouldn't be talking to the state if they didn't think it was important. However, it is not as important for this property as for the entire area north of Hwy 34. The state is curving the Hwy 79 intersection to a point where there is no stop or 90 degree turn. The length of that distance from N.W. 40th up to the access that they are willing to grant at the half section line is a long ways. Hunzeker believes it makes it difficult to get people in and out if you don't have some access back onto the highway.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

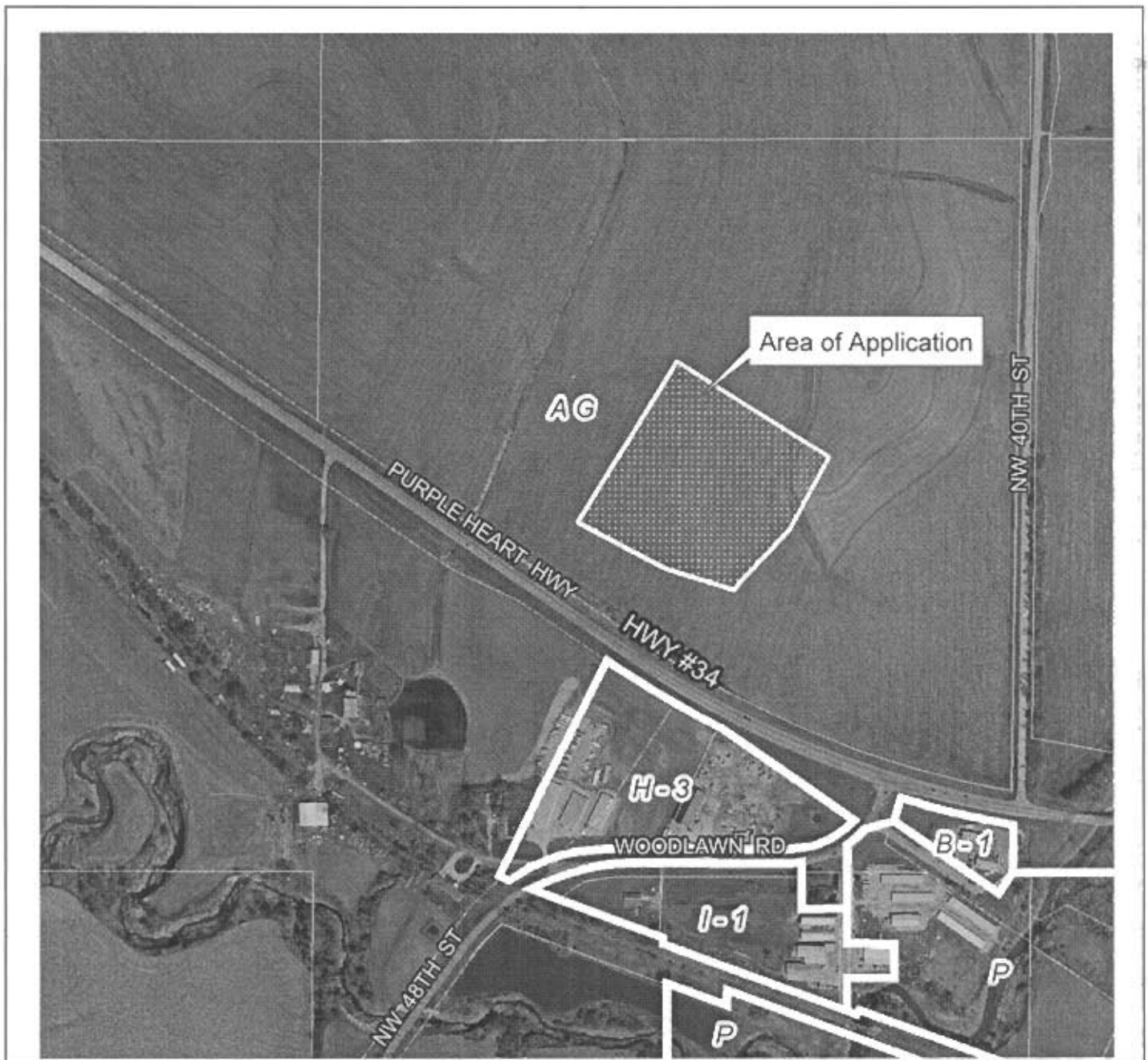
October 13, 2004

Larson moved to approve the staff recommendation, seconded by Taylor.

Carlson thinks it makes sense. There seemed to be some confusion about the number of acres in the staff report, but the testimony has cleared it up.

Marvin stated that he will support the motion.

Motion for conditional approval, as set forth in the staff report, carried 6-0: Carlson, Marvin, Larson, Taylor, Sunderman and Bills-Strand voting 'yes'; Carroll, Krieser and Pearson absent.



2002 aerial

Change of Zone #04060 NW 48th & Hwy #34

Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

****AS RECOMMENDED BY STAFF AND PLANNING COMMISSION****

One Square Mile
Sec. 31 T11N R6E



Zoning Jurisdiction Lines

City Limit Jurisdiction

W. Alvo Rd



W. Fletcher Ave.

009

Lincoln City - Lancaster County Planning De

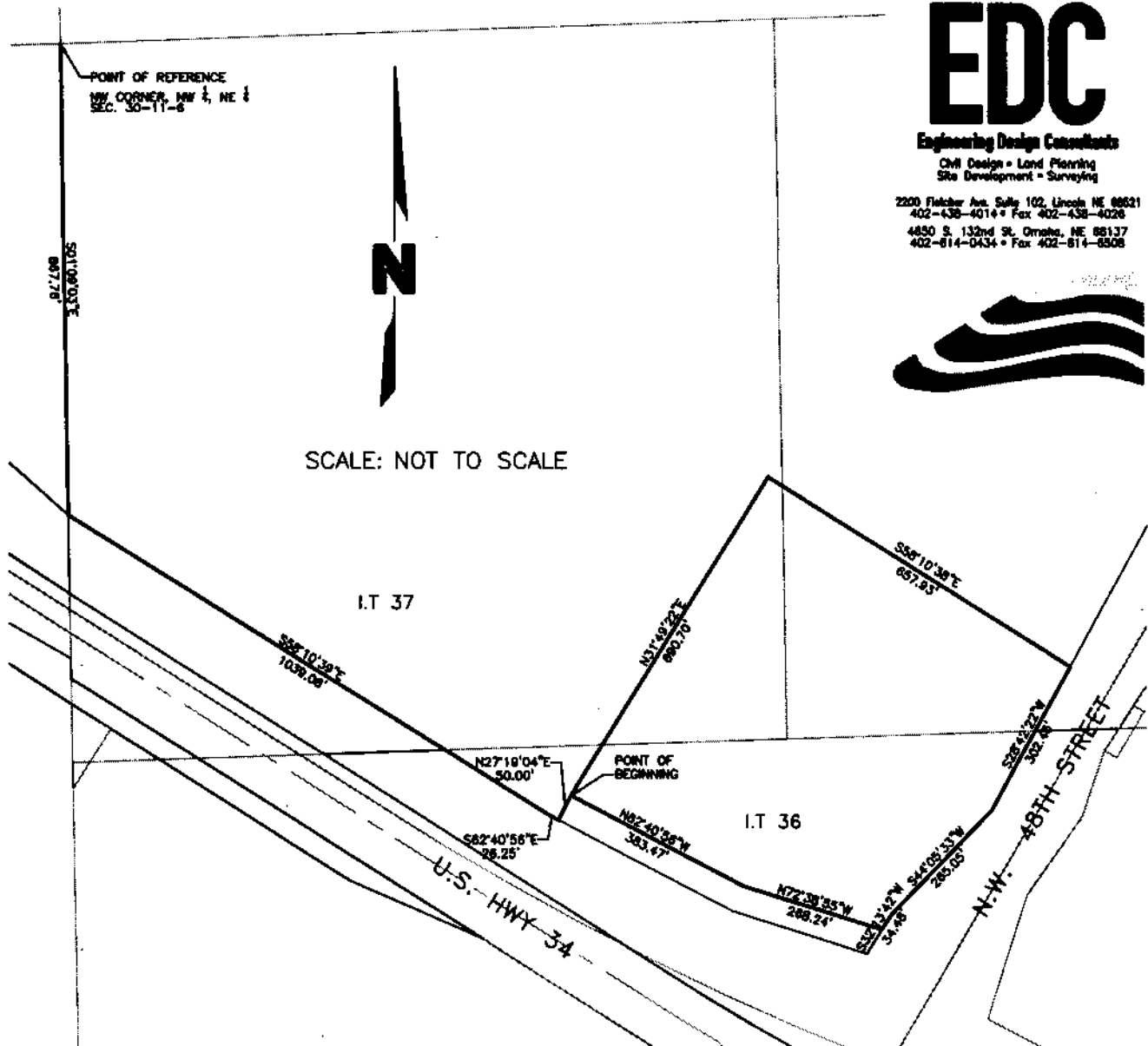
EDC

Engineering Design Consultants

Civil Design • Land Planning
Site Development • Surveying

2200 Fletcher Ave. Suite 102, Lincoln NE 68521
402-438-4014 • Fax 402-438-4028

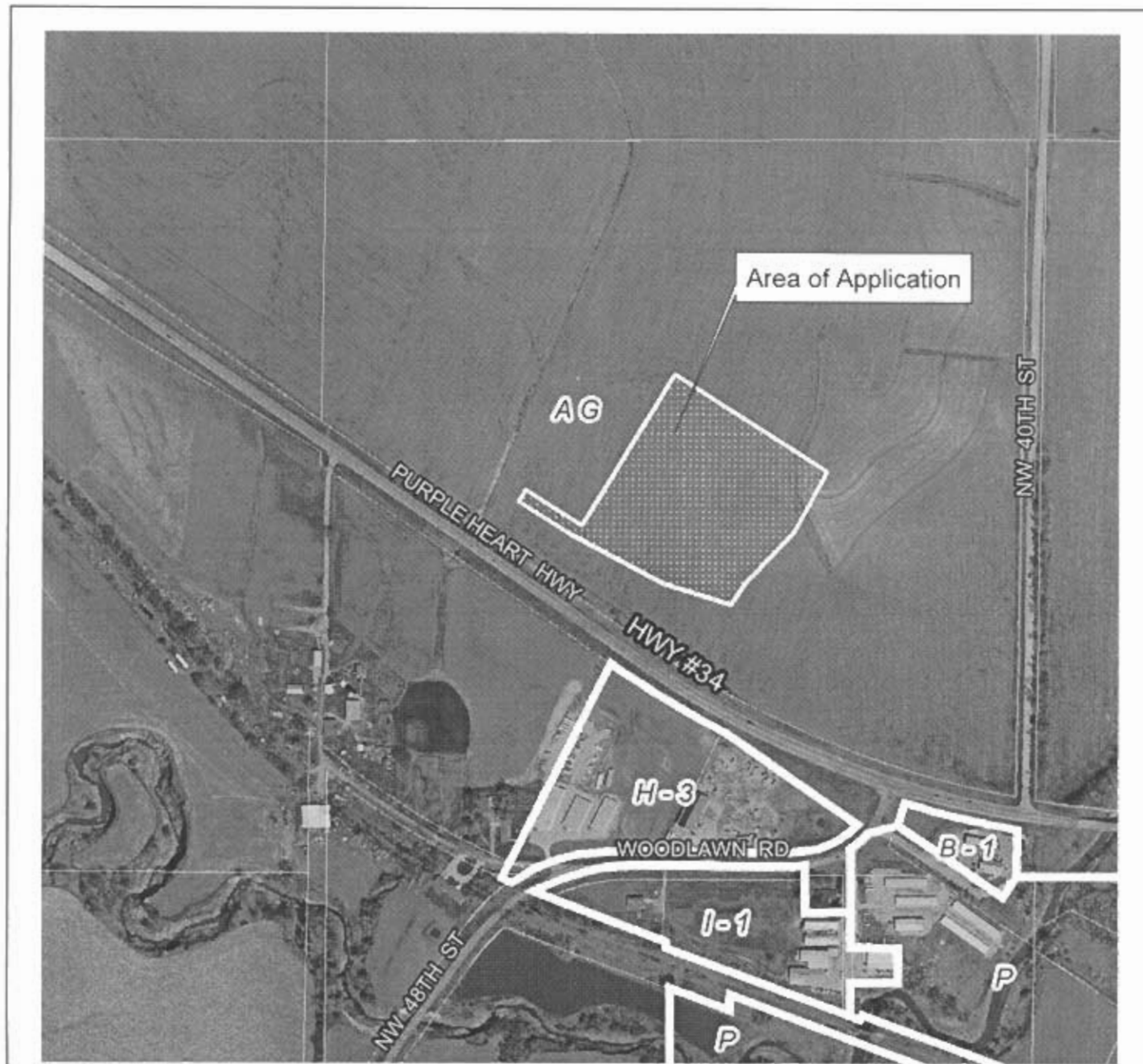
4850 S. 132nd St. Omaha, NE 68137
402-614-0434 • Fax 402-614-8808



CHANGE OF ZONE LEGAL DESCRIPTION

A TRACT OF LAND COMPOSED OF A PORTION OF LOTS 36 & 37 LOCATED IN THE NORTHEAST QUARTER AND A PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER ALL IN SECTION 31, TOWNSHIP 11 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

REFERRING TO THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 31; THENCE ON THE WEST LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 31 S01°09'03"E (ASSUMED), 867.76 FEET TO THE PROPOSED NORTH RIGHT-OF-WAY LINE OF US HIGHWAY 34; THENCE ON SAID PROPOSED NORTH RIGHT-OF-WAY LINE FOR THE NEXT 2 CALLS, S58°10'39"E, 1039.08 FEET; THENCE S62°40'56"E, 26.25 FEET; THENCE N27°19'04"E, 50.00 FEET TO THE POINT OF BEGINNING; THENCE N31°49'22"E, 690.70 FEET; THENCE S58°10'38"E, 657.93 FEET TO THE PROPOSED WEST RIGHT-OF-WAY LINE OF NW 48TH STREET; THENCE ON SAID PROPOSED WEST RIGHT-OF-WAY LINE FOR THE NEXT 3 CALLS, S28°42'22"W, 302.43 FEET; THENCE S44°05'33"W, 265.05 FEET; THENCE S32°13'42"W, 34.48 FEET; THENCE N72°38'55"W, 268.24 FEET; THENCE N62°40'56"W, 359.18 FEET TO THE POINT OF BEGINNING, CONTAINING 427,598 SQUARE FEET (9.82 ACRES) MORE OR LESS.



2002 aerial

Change of Zone #04060 NW 48th & Hwy #34

Zoning:

R-1 to R-8 Residential District

AG Agricultural District

AGR Agricultural Residential District

R-C Residential Conservation District

O-1 Office District

O-2 Suburban Office District

O-3 Office Park District

R-T Residential Transition District

B-1 Local Business District

B-2 Planned Neighborhood Business District

B-3 Commercial District

B-4 Lincoln Center Business District

B-5 Planned Regional Business District

H-1 Interstate Commercial District

H-2 Highway Business District

H-3 Highway Commercial District

H-4 General Commercial District

I-1 Industrial District

I-2 Industrial Park District

I-3 Employment Center District

P Public Use District

One Square Mile
Sec. 31 T11N R6E

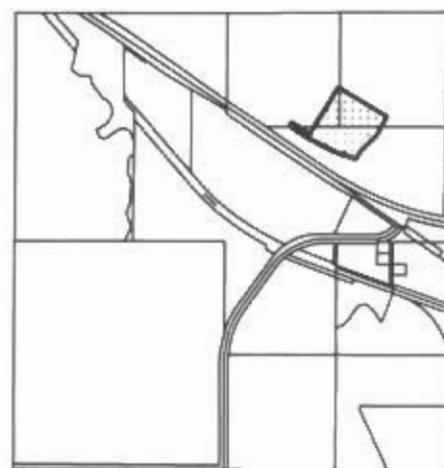


Zoning Jurisdiction Lines

City Limit Jurisdiction

W. Alvo Rd

NW 56th St.



NW 40th St.

W. Fletcher Ave.

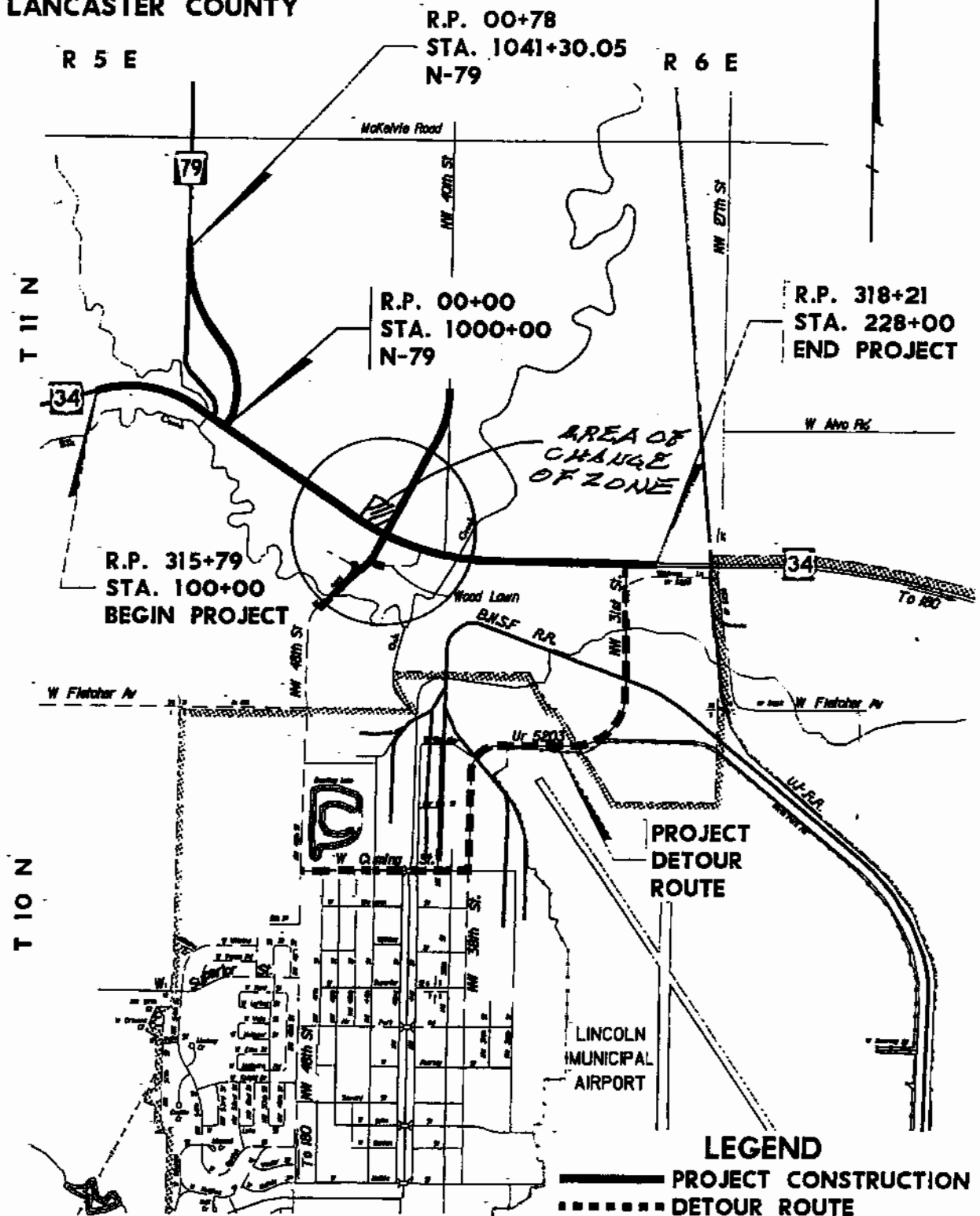
Lincoln City - Lancaster County Planning De

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LINCOLN WEST 34-6(133)

C.N. 12425

LANCASTER COUNTY



Nebraska Department of Roads
Hwy 34 and NW 40th/NW 48th Street project

Pierson|Fitchett
LAW FIRM

1045 Lincoln Mall
Suite 200
P.O. Box 95109
Lincoln, NE 68509
(402) 476-7621
fax (402) 476-7465
www.pierson-law.com

Thomas J. Fitchett
Mark A. Hunzeker
William G. Blake
Peter W. Katt
William C. Nelson
David P. Thompson
Patrick D. Timmer
Randy R. Ewing
Shanna L. Cole
Jason L. Scott

Gary L. Aksamit
of Counsel

September 2, 2004

Marvin Krout, Director
Lincoln-Lancaster County Planning Dept.
555 South 10th Street, Suite 213
Lincoln, Nebraska 68508

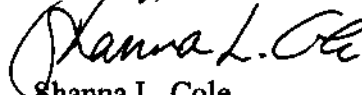
Re: *Change of Zone Application for Larry Coffey*

Dear Mr. Krout:

Attached is an application from Larry Coffey for a change of zone from AGR to H3 on property legally described on the attached exhibit. I certify that Larry Coffey is the owner of this property and the purpose of a request for a change of zone is to relocate an existing convenience store.

If you have further questions or concerns, please feel free to contact Mark Hunzeker or me.

Sincerely,



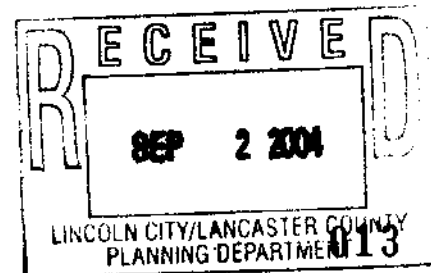
Shanna L. Cole
For the Firm
scole@pierson-law.com

SLC:lh

Enclosure

(G:\WPData\Sc\Coffey Planning Dept. 9-2.ltr.wpd)

Pierson, Fitchett, Hunzeker, Blake & Katt



Memorandum

To:	Mike Dekalb, Planning Department
From:	Dennis Bartels, Engineering Services
Subject:	Change of Zone 04060, AGR to H3
Date:	September 13, 2004
cc:	

The proposed change of zone at the northwest corner of Northwest 40th and Highway 34 has been reviewed by Engineering Services with the following comments:

1. The area of the change of zone cannot be served with City sewer and water.
2. This tract will not have driveway access to Highway 34.
3. Access to the property will need to be taken at the north end of the property from Northwest 40th.

Lancaster

County

Engineering

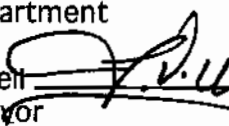
Department

DON R. THOMAS - COUNTY ENGINEER

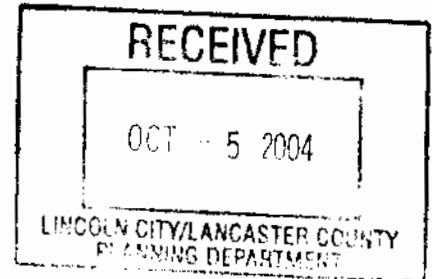
DEPUTY - LARRY V. WORRELL
COUNTY SURVEYOR

DATE: October 4, 2004

TO: Ray Hill
Planning Department

FROM: Larry V. Worrell 
County Surveyor

SUBJECT: CHANGE OF ZONE NO. 04060
NW 40TH STREET AND US HWY 34



This office does not have any objections to the subject Change of Zone, however we do have a concern about future access to NW 40th Street.

The optimum spacing for full access to an arterial street is 1,320 feet. The subject parcel has limited frontage on NW 40th Street. An access point may be possible at a spacing of 660 feet provided it is right in, right out when future road improvements are made. If possible, this parcel should be combined with additional property to plan overall access to this area.

Docs/Zone/Change of Zone 04060

LWW/DP/bml

015